



OLR RESEARCH REPORT

March 5, 2012

2012-R-0132

STATE EMPLOYEE RETIREMENT COMMISSION REGULATIONS

By: Mary Janicki, Research Analyst

You asked a series of questions regarding the State Employees Retirement Commission's regulations establishing the criteria for waiving repayment of overpaid pension benefits.

Under what authority did the State Employees Retirement Commission (SERC) adopt regulations establishing the criteria for an overpayment waiver?

In 1986, the General Assembly enacted the law that permits the State Employees' Retirement Commission (SERC) to adjust benefit payments to correct for errors (PA 86-348, codified at [CGS § 5-156c](#)). By law, the commission must adjust benefit payments whenever it discovers that an error has been made that affected benefits. If the commission finds that the system owes money to the retirement system member, it must give the member the choice of receiving higher payments or a lump sum payment. If a member or beneficiary has been overpaid through no fault of his or her own, the commission is authorized to waive any repayment if that would cause hardship. An overpayment can occur when a retiree receives disability benefits or workers compensation payments that should reduce the member's pension benefit or as the result of an administrative or clerical error.

Public Act 86-348 included the requirement that the Retirement Commission adopt regulations in accordance with the Uniform Administrative Procedure Act (UAPA) to establish "criteria for the waiver

of repayment” ([CGS § 5-156c\(c\)](#)). The commission’s regulations were adopted and became effective on December 21, 1987. These regulations have not been amended since they were adopted (Conn. Agencies Regs. § 5-156c-1).

Did SERC comply with required procedures in adopting these regulations?

Under the UAPA, a new or amended regulation is not valid until it has (1) been properly noticed, (2) had a public comment period, (3) been approved by the attorney general and the Legislative Regulation Review Committee (LRRC), and (4) been properly filed with the Office of the Secretary of the State. The secretary’s office forwards a copy of a certified regulation to the Commission on Official Legal Publications for publication, which includes publication in the *Connecticut Law Journal*.

Table 1 shows the dates these procedures occurred when SERC promulgated and adopted the regulations establishing the criteria for waiving the repayment requirement for overpaid retirement benefits, in compliance with the UAPA.

Table 1: SERC Compliance with UAPA

<i>Procedure in Adopting Connecticut Agencies Regs. § 5-156c-1</i>	<i>Date</i>
Notice of intent to adopt regulations published in <i>Connecticut Law Journal</i>	July 28, 1987
Preparation of the fiscal note	September 1, 1987
Public comment period	None requested
Attorney General approval	September 25, 1987
Legislative Regulation Review Committee approval	December 15, 1987
Office of the Secretary of the State filing	December 21, 1987
Publication in the <i>Connecticut Law Journal</i>	January 19, 1988

Attachment A is the certified copy of the regulations on file in the Office of the Secretary of the State with accompanying documentation of the adoption and approval process conforming to UAPA requirements.

What is SERC's criteria and procedures for determining hardship as articulated in the language of the regulation, communications to applicants for a waiver, and application requirements?

Regulations

Subsection (a) of the regulation gives the commission discretion in granting a waiver by stating that it “will waive” repayment “when” the commission is reasonably satisfied that certain conditions have been met and only then (emphasis added). The waiver is not mandatory.

The three conditions for a “recipient’s” hardship waiver set out in the regulations are:

1. the recipient could not reasonably have been expected to detect the error;
2. the recipient was not “at fault,” and
3. the repayment by the recipient would reduce his or her overall income from all sources to a level that would cause hardship and would not, therefore, in good conscience and in equity, permit the repayment of the overpayment.

To establish a recipient’s claim of hardship, the regulations require that he or she produce the last two years’ income tax returns and the current balance of all bank accounts. If the overpayment exceeds \$10,000, SERC can require any other additional information. As specified in the regulations, SERC also encourages a recipient to provide “any other evidence that the Recipient feels may establish hardship.”

Retirement Services Division Policies, Practices, and Guidelines

The Retirement Services Division is the unit in the Office of the State Comptroller that administers the state employees pension plans and provides administrative support to SERC. When a retiree or beneficiary has received an overpayment for any reason, the state is required to seek repayment that, typically, is recovered by taking a determined amount as an offset from the retiree’s monthly benefit payment for a specified period of time. In applying for a hardship waiver, the retiree has the burden to show to SERC’s satisfaction that he or she meets all three of the above criteria.

The Retirement Services Division requires anyone requesting a waiver to complete its Financial Affidavit form. The retiree must sign the form under oath and have it notarized. He or she must provide weekly income amounts, including a spouse's, from all sources and expenses for rent or mortgage, utilities, food, clothing, and transportation, among other things. He or she must also report all liabilities or debts and assets, including home equity, motor vehicles, other personal property, bank account balances, and stock and insurance policy holdings. The retiree must also include "all relevant documentation."

According to the Retirement Services Division, the condition of financial hardship may be met if recovery from the retiree's income and assets (calculated as a monthly repayment rate) would prevent the retiree from meeting ordinary and necessary living expenses for food, clothing, and shelter. The purchase or maintenance of non-essential items are not counted as living expenses and ownership of such items (like a boat or second home) generally indicates the retiree has assets sufficient to repay the overpayment amount.

Under what authority are these regulations and policies implemented?

By law, the general administration and responsibility for the proper operation of the state employees retirement system is vested in the State Employees Retirement Commission ([CGS § 5-155a](#)). SERC has general supervision of the system's operation and must conduct its business and activities in accordance with the law. As the system fiduciary, it must act with care, skill, prudence, and diligence as a prudent person would, in accordance with strict fiduciary standards.

The law also authorizes anyone whose claim has been denied to request that SERC review and reconsider any decision in accordance with the UAPA's contested case provisions.

MJ:km

Attachment A

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3 REV. 1/77

*IMPORTANT: Read Instructions on bottom of
Certification Page before completing this
form. Failure to comply with instructions
may cause disapproval of proposed
Regulations.*

STATE OF CONNECTICUT REGULATION

3626

Page 1 of 3 pages

OF

NAME OF AGENCY

State Employees Retirement Commission

Concerning

SUBJECT MATTER OF REGULATION

Criteria for Waiver of Overpayment

SECTION _____

The Regulations of Connecticut State Agencies are amended by adding Section 5-156c-1, as follows:

(New) Section 5-156c-1 Criteria for waiver of overpayment

(a) Section 5-156c of the General Statutes permits the Commission to waive all or part of the repayment of an overpayment when: the one to whom it was made (the "Recipient") could not reasonably have been expected to detect the error; the Commission believes that such repayment will cause hardship; and the overpayment was through no fault of the Recipient. Acting under the authority of said section the Commission will waive in whole or in part such repayment when it appears to the Commission's reasonable satisfaction that:

- (1) the Recipient could not reasonably have been expected to detect the error; and
- (2) the Recipient was not "at fault", that is, did not directly or indirectly falsify any information which led to the making, authorizing, or approval or overpayment(s); and
- (3) the repayment by the Recipient would reduce his or her over-all income from all sources to a level that would cause hardship and would not, therefore, in good conscience and in equity, permit the repayment of the overpayment.

Attachment A (continued)

A REV. 1/77

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STATE OF CONNECTICUT
REGULATION
OF

Page 2 of 3 pages

NAME OF AGENCY
State Employees Retirement Commission

SECTION _____

(b) When the Recipient wishes the Commission to waive repayment of some or all of the overpayment, on the basis of hardship, the Recipient will be required to produce his or her last two years income tax returns and the current balances of all bank accounts, unless the overpayments amounted to more than \$10,000, in which case, the Commission reserves the right to require additional information.

(c) A one time overpayment may be treated differently from overpayments made over a long period.

(d) The Commission encourages the Recipient to submit any other evidence that the Recipient feels may establish hardship. De minimis overpayments totaling \$100 or less will not be subject to recovery because, in the judgement of the Commission, such recovery would impede the efficient and effective administration of the statute.

STATEMENT OF PURPOSE:

To establish criteria for the waiver of repayment of an overpayment made to a member or beneficiary of the State Employees Retirement System.

Attachment A (continued)

CERTIFICATION
R-39 REV. 1/77

3626

Be it known that the foregoing:

Page 3 of 3 pages

☒ Regulations ☐ Emergency Regulations
Are:

☒ Adopted ☐ Amended as hereinabove stated ☐ Repealed

By the aforesaid agency pursuant to:

☒ Section 5-156c of the General Statutes.

☐ Section _____ of the General Statutes, as amended by Public Act No. _____ of the _____ Public Acts.

☐ Public Act No. _____ of the Public Acts.

After publication in the Connecticut Law Journal on July 28, 1987, of the notice of the proposal to:

☒ Adopt ☐ Amend ☐ Repeal such regulations

(If applicable): ☐ And the holding of an advertised public hearing on _____ day of _____ 19 _____

WHEREFORE, the foregoing regulations are hereby:

☐ Adopted ☐ Amended as hereinabove stated ☐ Repealed

Effective:

☒ When filed with the Secretary of the State.

(OR)

☐ The _____ day of _____ 19 _____.

In Witness Whereof:	DATE <u>9/1/87</u>	SIGNED (Head of Board, Agency or Commission) <u>Wm J. Faxon</u>	OFFICIAL TITLE, DULY AUTHORIZED Chairman, State Employees Retirement Commission
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Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4-169, as amended, C.G.S.:	SIGNED <u>C. Riddle</u>	OFFICIAL TITLE, DULY AUTHORIZED Sept. 25, 1987
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☐ Approved

☐ Disapproved

☐ Disapproved in part, (Indicate Section Numbers disapproved only)

☐ Rejected without prejudice.

By the Legislative Regulation Review Committee in accordance with Sec. 4-170, as amended, of the General Statutes.	DATE <u>12/15/87</u>	SIGNED (Clerk of the Legislative Regulation Review Committee) <u>Paul A. Spence</u>
--	-------------------------	--

Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

DATE <u>December 21, 1987</u>	SIGNED (Secretary of the State) <u>Julius H. Sarkisian</u>	BY <u>Agnes L. Kerr</u>
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INSTRUCTIONS

- One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.
- Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.
- Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.
- Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capital letters and deleted language in brackets. Section 4-170 of the General Statutes.

RECEIVED

DEC 21 1987

ATTOR. GEN. SECY. OF STATE

Attachment A (continued)

3626 Regulations OF State Employees Retirement Commission	8626
CONCERNING "Criteria for waiver of overpayment"	
Received and filed in the office of the Secretary of the State	
December 21,	19 87
Approved by Attorney General	
Sept. 25,	19 87
Approved by Legislative Regulation Review Committee or General Assembly	
December 15,	19 82
Published in Connecticut Law Journal	
Jan. 19,	1988
July 28,	19 87?

Attachment A (continued)



3626
State of Connecticut

SECRETARY OF THE STATE
30 TRINITY STREET
HARTFORD, CONN. 06106

3626



JULIA H. TASHJIAN
SECRETARY

BERNARD P. AUGER
DEPUTY SECRETARY

December 21, 1987

Mrs. Ruth Goodrich
Legislative Regulations Review Committee
State Capitol, Room E-7
Hartford, CT 06106

Dear Mrs. Goodrich:

Please be informed that the Regulations of the following:

Name of Agency or Department: State Employees
Retirement Commission

Concerning: Criteria for Waiver of Overpayment

Approved by the Attorney General on: September 25, 1987

Approved by the Leg. Regulations Review Committee on
December 15, 1987 and was filed in the Office of the Secretary of
the State on December 21, 1987.

Sincerely,

A handwritten signature in cursive script that reads "Agnes L. Kerr".

Agnes L. Kerr
Acting Administrator
Records & Legislative Services

ALK:jap
File

Attachment A (continued)



3626
State of Connecticut **3626**
SECRETARY OF THE STATE
30 TRINITY STREET
HARTFORD, CONN. 06106



JULIA H. TASHJIAN
SECRETARY

BERNARD P. AUGER
DEPUTY SECRETARY

December 21, 1987

Mr. Steven Weinberger
Assistant Director
State Employees Retirement Div.
30 Trinity Street
Hartford, CT 06106

Dear Mr. Weinberger:

This is to acknowledge receipt of two certified copies of the following regulation(s) issued by your department concerning:

Criteria for Waiver of Overpayment

Said regulation(s) were received and filed in this office on December 21, 1987 and became effective on that date.

Sincerely,

A handwritten signature in cursive script that reads "Agnes L. Kerr".

Agnes L. Kerr
Acting Administrator
Records & Legislative Services

ALK:jap
File

Attachment A (continued)

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State of Connecticut

STATE EMPLOYEES
RETIREMENT COMMISSION
OFFICE OF THE STATE COMPTROLLER
30 TRINITY STREET
HARTFORD, CONNECTICUT 06106
203-566-2126

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October 5, 1987

Ruth Goodrich, Clerk
Legislative Management
Legislative Regulations Review Committee
State Capitol, Room E-7
Hartford, CT 06106

Dear Ms. Goodrich:

Enclosed please find for the Committee's review a regulation, Section 5-156c-1, entitled: "Criteria for waiver of overpayment", which has been proposed by the State Employees Retirement Commission.

Any questions concerning this regulation may be directed to the undersigned at 566-5639.

Very truly yours,

STATE EMPLOYEES RETIREMENT COMMISSION
J. EDWARD CALDWELL, SECRETARY EX OFFICIO

BY:

A handwritten signature in cursive script, appearing to read "Steven Weinberger".

Steven Weinberger, Assistant Director
Retirement Division

SW/md

Attachment A (continued)

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CONNECTICUT LAW JOURNAL

July 28, 1987

be sent to the attention of Steven R. Donen, Legislative and Regulations Specialist, Connecticut Department of Housing, 1179 Main Street, Hartford, Connecticut, 06103-1089.

JOHN F. PAPANDREA
Commissioner

DEPARTMENT OF HOUSING

Notice of Intent to Adopt Regulations

In accordance with Section 4-168 of the Connecticut General Statutes, as amended, notice is hereby given that the Commissioner of Housing, under the authority of Public Act 87-494, An Act Concerning Homeowners Emergency Repair Assistance for Senior Citizens, intends to adopt regulations pertaining to the Senior Citizen Emergency Home Repair and Rehabilitation Fund established by said public act.

Statement of purpose: To provide for the administration of the Senior Citizen Emergency Home Repair and Rehabilitation Fund; to establish financial qualifications for grant and loan recipients; to ensure that grants and loans are used only for repair or rehabilitation necessary to permit continued use of the dwelling for residential purposes; to establish requirements and limitations for adjustment of terms and conditions of loan repayment; to establish funding priorities and to establish other requirements deemed necessary to carry out the purposes of PA 87-494.

All interested persons who wish to present their views on the proposed regulations may do so in writing within 30 days following the publication of this notice. An original and five copies of such written comments should be sent to the attention of Steven R. Donen, Legislative and Regulations Specialist, Connecticut Department of Housing, 1179 Main Street, Hartford, Connecticut, 06103-1089.

JOHN F. PAPANDREA
Commissioner

STATE EMPLOYEES RETIREMENT COMMISSION

Notice of Intent to Amend Regulations

In accordance with the provisions of Section 4-168 of the General Statutes of Connecticut, as amended, notice is hereby given that the Connecticut State Employees Retirement Commission, under the authority of Section 5-156c of the General Statutes, announces its intention to amend the Regulations of Connecticut State Agencies by adopting the following new section: 5-156c-1. This regulation establishes criteria for the waiver of repayment of an overpayment made to a member or beneficiary of the State Employees Retirement System.

Attachment A (continued)

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CONNECTICUT LAW JOURNAL

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All interested parties may submit data or opinion in connection with the adoption of this proposed regulation within thirty days following publication of this notice to Connecticut State Employees Retirement Commission, c/o JoAnn S. Mogensen, Director, State Employees Retirement Division, 30 Trinity Street, Hartford, CT 06106.

The proposed regulation is set forth below in its entirety.

(New) **Sec. 5-156c-1. Criteria for waiver of overpayment**

(a) Section 5-156c of the General Statutes permits the Commission to waive all or part of the repayment of an overpayment when: the one to whom it was made (the "Recipient") could not reasonably have been expected to detect the error; the Commission believes that such repayment will cause hardship; and the overpayment was through no fault of the Recipient. Acting under the authority of said section the Commission will waive in whole or in part such repayment when it appears to the Commission's reasonable satisfaction that:

(1) the Recipient could not reasonably have been expected to detect the error; and

(2) the Recipient was not "at fault," that is, did not directly or indirectly falsify any information which led to the making, authorizing, or approval of overpayment(s); and

(3) the repayment by the Recipient would reduce his or her over-all income from all sources to a level that would cause hardship and would not, therefore, in good conscience and in equity, permit the repayment of the overpayment.

(4) When the Recipient wishes the Commission to waive repayment of some or all of the overpayment, on the basis of hardship, the Recipient will be required to produce his or her last two years income tax returns and the current balances of all bank accounts, unless the overpayments amounted to more than \$10,000, in which case, the Commission reserves the right to require additional information.

(c) A one time overpayment may be treated differently from overpayments made over a long period.

(d) The Commission encourages the Recipient to submit any other evidence that the Recipient feels may establish hardship. De minimus overpayments totaling \$100 or less will not be subject to recovery because, in the judgment of the Commission, such recovery would impede the efficient and effective administration of the statute.

Statement of purpose: To establish criteria for the waiver of repayment of an overpayment made to a member or beneficiary of the State Employees Retirement System.

Attachment A (continued)

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SUMMARY OF COMMENTS

No comments were received concerning this regulation.

Attachment A (continued)

AGENCY FISCAL ESTIMATE OF PROPOSED REGULATION **8626**

AGENCY SUBMITTING REGULATION State Employees Retirement Commission DATE 9/1/87
 SUBJECT MATTER OF REGULATION Criteria for Waiver of Overpayment
 REGULATION SECTION NO. 5-156c-1 STATUTORY AUTHORITY 5-156c
 OTHER AGENCIES AFFECTED None
 EFFECTIVE DATE USED IN COST ESTIMATE 9/1/87
 ESTIMATE PREPARED BY Steven Weinberger TELEPHONE 566-5639

SUMMARY OF STATE COST AND REVENUE IMPACT OF PROPOSED REGULATION

Agency	Fund Affected <u>State Employees Retirement Trust Fund</u>		
	First Year 1987-88	Second Year 1988-89	Full Operation 1989-90
Number of Positions	-	-	-
Personal Services	-	-	-
Other Expenses	-	-	-
Equipment	-	-	-
Grants	-	-	-
Total State Cost (Savings)	\$85,000*	*	*
Estimated Revenue Gain (Loss)			
Total Net State Cost (Savings)	\$85,000*	*	*

EXPLANATION OF STATE IMPACT OF REGULATION:

* This provision allows for the waiver of overpaid State employee retirement benefits. The \$85,000 cost for the first year is based upon awarding all pending applications for waiver. It is impossible to predict the number or dollar amounts of future applications for waiver because of the difficulty in estimating the number and dollar amounts of erroneously overpaid members.

EXPLANATION OF MUNICIPAL IMPACT OF REGULATION:

None.